Hospital of Barstow, Inc. d/b/a Barstow Community Hospital *and* California Nurses Association/National Nurses Organizing Committee (CNA/NNOC), AFL–CIO. Cases 31–CA–090049 and 31–CA–096140

August 29, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND JOHNSON

On September 9, 2013, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent, the General Counsel, and the Union each filed exceptions, a supporting brief, an answering brief, and a reply brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] only to the extent consistent with this Decision and Order, to amend his remedy, and to adopt his recommended Order as modified and set forth in full below.[4]

We adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to submit any proposals or counterproposals until it received the Union's entire contract proposal. See, e.g., *Fallbrook Hospital*, 360 NLRB No. 73, slip op. at 1 (2014); *Ardsley Bus Corp.*, 357 NLRB No. 85, slip op. at 3 (2011). We also adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by declaring impasse and refusing to bargain unless the Union directed unit employees to stop using the union-provided assignment despite objection (ADO) form to document circumstances that they believed were unsafe for patients or could jeopardize their nursing licenses.[5]

[1] Subsequently, the Respondent filed a letter calling the Board's attention to recently issued case authority, and the General Counsel filed a letter in response. Pursuant to *Reliant Energy*, 339 NLRB 66 (2003), we have accepted both submissions.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In his decision, the judge inadvertently stated that the Respondent contends that the "merger" of the Union with the National Union of Healthcare Workers (NUHW) created discontinuity of representation privileging a refusal to bargain, when in fact the Respondent's contention was based on the "affiliation" of the Union with the NUHW. This error does not affect our disposition of this case.

[3] We adopt the judge's finding that deferral to arbitration under *Collyer Insulated Wire*, 192 NLRB 837 (1971), is not appropriate here. The parties have no collective-bargaining agreement setting forth an agreed-upon grievance-arbitration procedure. See, e.g., *Arizona Portland Cement Co.*, 281 NLRB 304, 304 fn. 2 (1986). In addition, deferral is generally inappropriate where the parties have not had "a long and productive collective-bargaining relationship." *United Technologies Corp.*, 268 NLRB 557, 558 (1984). Here, as the judge properly found, the relationship was neither long nor productive. See *San Juan Bautista Medical Center*, 356 NLRB No. 102, slip op. at 2 (2011), and cases cited there.

In adopting the judge's finding, Member Johnson relies on the Federal Arbitration Act's requirement that agreements to arbitrate must be in writing. 9 U.S.C. § 2.

[4] We shall modify the judge' recommended remedy and Order to reflect our award of negotiation expenses, as explained below.

We shall also modify the judge's conclusions of law, remedy, and Order to reflect the finding of an additional violation, as explained below. We shall further modify the Order to conform to our standard remedial language and to substitute July 26, 2012, the date of the Respondent's first unfair labor practice, for purposes of the contingent notice mailing obligation pursuant to *Excel Container, Inc.*, 325 NLRB 17 (1997). In addition, we shall substitute a new notice to conform to the Order as modified and in accordance with our decisions in *J. Picini Flooring*, 356 NLRB No. 9 (2010), and *Durham School Services*, 360 NLRB No. 85 (2014).

Although the Respondent excepts in blanket fashion "to the entirety" of the judge's recommended Order, it neither excepts to nor argues the propriety of the judge's recommended affirmative bargaining order for the violations found. We therefore find it unnecessary to furnish a specific justification for that remedy. *SKC Electric, Inc.*, 350 NLRB 857, 862 fn. 15 (2007) (citing *Scepter v. NLRB*, 280 F.3d 1053, 1057 (D.C. Cir. 2002) ("a generalized exception to a remedial order is insufficiently specific to preserve a particular objection for appeal," and in the absence of particular exceptions the Board may issue an affirmative bargaining order without stating a rationale)).

[5] As the judge found, neither party submitted any proposals, nor did the parties bargain, about the ADO form. Accordingly, the Respondent's declaration of impasse over this subject and its concurrent refusal to bargain were unlawful, irrespective of whether the ADO form constitutes a mandatory or permissive subject of bargaining. We find it unnecessary to pass on the judge's finding that the ADO form is a permissive subject.

We reject the Respondent's belated contention that it had no bargaining obligation because the underlying certification of representative issued when the Board lacked a quorum. The Respondent waived its right to challenge the validity of the certification when it entered into negotiations with the Union. *Nursing Center at Vineland*, 318 NLRB 901, 904 (1995) (citing *Technicolor Government Services, Inc. v. NLRB*, 739 F.2d 323, 326–327 (8th Cir. 1984)). For the reasons stated in *The Ardit Co.*, 360 NLRB No. 15 (2013), we find no merit in the Respondent's contention that the Acting General Counsel lacked the authority to prosecute this case.

As in *Fallbrook Hospital*, supra, Member Johnson agrees with the judge and his colleagues that the Respondent unlawfully refused to bargain over the terms of an initial collective-bargaining agreement. However, he does not find that the Respondent's request for a full set of proposals from the Union during bargaining—a position that in other circumstances may serve to speed bargaining to either agreement or a

The General Counsel excepts to the judge's failure to find that the Respondent unilaterally changed its certification training policy by (1) requiring that the nurses utilize an online training program known as "HeartCode," and (2) failing to pay the nurses in full for the time spent to complete the HeartCode training. We find merit in the General Counsel's exception for the reasons explained below.

Facts

The Respondent requires its registered nurses to be certified in basic life support, advanced cardiac life support, and pediatric life support, and to renew those certifications every 2 years by completing requisite training classes. For several years, the Respondent offered instructor led certification training at its facility and paid employees in full for the time spent in those training sessions. For example, in April 2012, RN Mary Moon renewed her certification in pediatric life support through onsite instructor led training and the Respondent compensated her for the 7 hours she spent taking the training. The Respondent did not set a maximum number of training hours for which employees could be paid. Alternatively, the Respondent allowed employees to take the training classes at any American Heart Association approved facility, but it did not pay them for the time spent in those offsite sessions.

In early 2012,[6] the Union commenced an organizing campaign at the Respondent's facility and, on May 10, won an election to represent the Respondent's registered nurses. Afterwards, the Respondent began offering certification training through HeartCode, a self-directed online program, and capped the number of paid hours for completing the HeartCode training at 2 hours for basic life support, and 6 hours each for advanced cardiac life support and for pediatric life support. Throughout June and July, the Respondent continued to offer onsite, instructor led training sessions. On June 29, the Regional Director certified the Union as the exclusive bargaining representative of the Respondent's registered nurses. Soon thereafter, the Union and the Respondent began collective-bargaining negotiations.

On August 2, the Respondent's board of trustees signed and implemented the HeartCode policy, which stated that "effective August 2, 2012, HeartCode replaces instructor-led classes." The Respondent announced the new HeartCode policy to employees during meetings and by posting flyers on its bulletin boards.

Later that month, the Union learned from unit employees that the Respondent had implemented the HeartCode policy. The Union requested information from the Respondent regarding the policy. In response to the nurses' expressed concern that the new policy would no longer allow them to take offsite, instructor led training, the Union submitted a bargaining proposal to allow the nurses to obtain their certifications through offsite, instructor led training at any American Heart Association approved facility, as before. The Respondent did not respond to either the request for information or the bargaining proposal.

Among the nurses who completed HeartCode training since August 2, four exceeded the maximum number of paid hours. Consistent with the HeartCode policy, the Respondent did not pay those nurses for the additional hours.[7]

At the hearing, the General Counsel argued that the Respondent violated Section 8(a)(5) and (1) of the Act by implementing the changes to its certification training policy. The judge observed that the Union learned about the policy change in the last week of August, but stated, without elaboration, that the Respondent had "made these changes in April, prior to the Union's election as bargaining representative."

Discussion

Employee training and remuneration for time spent in required training relate to employees' wages, hours, and other terms and conditions of employment, and therefore constitute mandatory subjects of collective bargaining. See *Southern California Gas Co.*, 346 NLRB 449, 449 (2006). A unilateral change with regard to a mandatory subject of bargaining violates Section 8(a)(5) and (1) of the Act if the change is "material, substantial, and significant." *Flambeau Airmold Corp.*, 334 NLRB 165, 165 (2001), modified on other grounds 337 NLRB 1025 (2002); see generally *NLRB v. Katz*, 369 U.S. 736 (1962). The Respondent does not dispute that it implemented the HeartCode policy unilaterally. Rather, it argues that (1) it introduced the HeartCode program to employees before the election and therefore before the Respondent had an obligation to bargain, and (2) the replacement of onsite, instructor led training with HeartCode training was not a material, substantial, or significant change. We reject both arguments.

To begin, we find that the Respondent implemented the HeartCode policy on August 2. The Respondent asserts that it held an information session for managers

good-faith impasse and thus serve the Act's goals—reflected an unlawful refusal to bargain.

[6] All dates are in 2012 unless stated otherwise.

[7] On May 31, 2013, 2 weeks before the scheduled unfair labor practice hearing, the Respondent paid the four nurses for this previously unpaid time.

about HeartCode in April, before the May 10 election. But the evidence suggests that this meeting was held to give managers a preview of the HeartCode program that the Respondent was then considering. In light of the testimony of Chief Quality Officer and Facility Compliance Officer Diana Sheriff that no hospital policy became effective until approved by the board of trustees, we find that the policy was not actually adopted or implemented as a replacement for onsite, instructor led training until August 2. We reject the Respondent's contention that it replaced onsite, instructor led training with HeartCode in April. First, the Respondent failed to offer any evidence that HeartCode training even became available to employees in April. As the Respondent's own witnesses acknowledged, it was not until June 8 when the first employee began HeartCode training.[8] In any event, the Respondent continued to offer the alternative of onsite, instructor led training well after the May 10 election.

We further find no merit in the Respondent's claim that the change was not material, substantial, or significant. The Respondent replaced onsite, instructor led training with the HeartCode online training *and* limited the number of paid hours for taking that training. Four employees who completed HeartCode training after August 2 were not paid for training time that exceeded the maximum number of hours designated in the HeartCode policy.[9] This was a departure from the Respondent's practice of paying its employees in full for the time spent taking the onsite, instructor led certification training.[10] Board law is clear that changes affecting employees' compensation and benefits are material, substantial, and significant. See, e.g., *Rangaire Co.*, 309 NLRB 1043, 1043 (1992) (an extra 15 minutes of paid lunchbreak once per year); *Beverly Enterprises*, 310 NLRB 222, 239 (1993) (free coffee), enfd. in pertinent part 17 F.3d 580 (2d Cir. 1994). The fact that only four employees were shown to have failed to complete the HeartCode training within the allocated time, and therefore did not timely receive reimbursement for excess time taken, does not make the change insubstantial. See, e.g., *Ivy Steel & Wire*, 346 NLRB 404, 419 (2006) ("The fact that the unilateral change . . . may have affected only one unit employee, and not other members of the bargaining unit, does [not] render the change inconsequential or insubstantial.").

In addition, changes that impair employee choice or discretion related to employment benefits are material, substantial, and significant. See *Caterpillar, Inc.*, 355 NLRB 521, 523 (2010); *Flambeau Airmold Corp.*, 334 NLRB at 166. Here, the Respondent discontinued the onsite, instructor led training that some of its employees preferred and replaced it with a computerized program.[11]

In sum, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing the HeartCode policy to replace its onsite, instructor led training with the online program, and by limiting the number of hours that employees were paid for completing the program.

Amended Conclusions of Law

Insert the following paragraph and renumber the subsequent paragraph.

"5. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing its HeartCode policy to replace onsite, instructor led training with the online training program, and by limiting the number of hours that employees could be paid for completing the program."

[8] To support its argument that it introduced the HeartCode program to employees before the election, the Respondent also contends that it created a HeartCode fact sheet and distributed it to employees in April. This contention is contradicted by the testimony of the Respondent's director of staff education, Terry Jackson, that she created the fact sheet "after April"; it is also contradicted by the fact sheet itself, which states that HeartCode "was initiated in May." The use of the past tense suggests the likelihood of an even later initiation date.

[9] We reject the Respondent's contention that its failure to pay the four unit employees was an inadvertent error. The Respondent presented no evidence to support that claim. Moreover, the claim is contradicted by the clear language of the HeartCode policy revision (GC Exh. 23) expressly reaffirming reimbursement maximums, and by the specific testimony of Director Jackson that employees were not to be paid for training time spent in excess of maximums set by the HeartCode policy

[10] We find that the General Counsel failed to establish that the Respondent changed its practice of allowing unit employees to obtain certifications through offsite instructor led training. Although the Respondent's August 2 HeartCode policy states that "HeartCode replaces instructor-led classes," it does not specifically state that HeartCode replaces *offsite* instructor led classes. The General Counsel presented no evidence that the Respondent directed unit employees not to take offsite training or rejected the certifications they obtained through offsite training.

[11] We disagree with our colleague that this change was not material, substantial, and significant. Onsite, instructor led training and online, self directed computer training are significantly different formats and their effectiveness will vary depending on the learning styles of individual employees. For example, RN Mark Ziemerman testified that HeartCode training requires computer skills beyond those normally required in the workplace and that even he, a former onsite training instructor, had difficulty completing the HeartCode training.

Member Johnson would not find that the General Counsel has proven the substitution of a computerized training program for live instructor led training, without more, constituted a material, substantial, and significant change triggering the statutory duty to bargain. This is no difference in impact upon employees, in essence, than simply switching individual instructors, with different teaching styles and different teaching foci. That kind of minutiae is not properly characterized as a change that triggers bargaining. He would therefore find that the Respondent violated Sec. 8(a)(5) by unilaterally implementing the HeartCode policy *because* it included the reimbursement limitation.

Amended Remedy

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by implementing the HeartCode policy without affording the Union prior notice and an opportunity to bargain, we shall order the Respondent to cease and desist, to give the Union notice and an opportunity to bargain prior to implementing any unilateral changes, and, upon request by the Union, to rescind the HeartCode policy and restore the status quo ante. In addition, we shall order the Respondent to make whole affected employees for any loss of wages and other benefits they may have suffered as a result of the Respondent's unlawful unilateral changes. The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Further, we shall order the Respondent to compensate affected employees for any adverse tax consequences of receiving a lump-sum backpay award and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee. *Tortillas Don Chavas,* 361 NLRB No. 10 (2014).

The Union has requested three additional remedies: (1) a public notice reading, (2) an award of its litigation expenses, and (3) an award of its negotiation expenses. We find that the Union has not demonstrated that a notice reading is needed to remedy the effects of the Respondent's unfair labor practices. See *Alstyle Apparel*, 351 NLRB 1287, 1288 (2007). We also reject the Union's request for litigation expenses because the defenses raised by the Respondent, although without merit, were not entirely frivolous. See, e.g., *Waterbury Hotel Management LLC*, 333 NLRB 482, 482 fn. 4 (2001), enfd. 314 F.3d 645 (D.C. Cir. 2003).

However, having considered the evidence of the Respondent's approach to collective bargaining, we find that an award of negotiation expenses is necessary to remedy the detrimental effect the Respondent's unlawful conduct has had on the bargaining process. In *Frontier Hotel & Casino*, 318 NLRB 857, 859 (1995), enfd. in relevant part sub nom. *Unbelievable, Inc. v. NLRB*, 118 F.3d 795 (D.C. Cir. 1997), the Board set forth the standard for determining whether negotiation expenses should be awarded: "In cases of unusually aggravated misconduct . . . where it may fairly be said that a respondent's substantial unfair labor practices have infected the core of a bargaining process to such an extent" that traditional remedies will not eliminate their effects, an award of negotiation expenses is warranted to "make the charging party whole for the resources that were wasted because of the unlawful conduct, and to restore the economic strength that is necessary to ensure a return to the status quo ante at the bargaining table." The Board emphasized that this standard "reflects the direct causal relationship between the respondent's actions in bargaining and the charging party's losses." Id.

In the present case, the record shows that the Respondent deliberately acted to prevent any meaningful progress during bargaining sessions. For example, the Respondent refused to provide any proposals or counterproposals during the first five bargaining sessions until it received a full set of proposals from the Union. Only after the Union satisfied the Respondent's unlawful demand for a full contract proposal did the Respondent proffer some proposals during the next three bargaining sessions, which occurred between October 17 and November 29. At the next bargaining session, on December 28, however, the Respondent threatened to stop bargaining if the Union persisted in encouraging employees' use of the Union's ADO form. At a mediated bargaining session on January 11, 2013, the Respondent refused to bargain further, erroneously claiming that the use of the ADO forms caused the parties to be at impasse. Thereafter, the Respondent adamantly and repeatedly refused to respond to the Union's requests for future bargaining dates, despite the Union's open invitation to discuss any matter, including the ADO forms.

We find that the Respondent's misconduct infected the core of the bargaining process to such an extent that its effects cannot be eliminated by the application of our traditional remedy of an affirmative bargaining order. In reaching that conclusion, we rely on the record evidence that the Respondent, by deliberately bargaining in bad faith, directly caused the Union to waste its resources in futile bargaining. See, e.g., *Camelot Terrace*, 357 NLRB No. 161, slip op. at 4 (2011) (awarding negotiation costs based on a direct causal relationship between employer's actions in bargaining and the charging party's losses); *Regency Service Carts*, 345 NLRB 671, 676 (2005) (same). See also *Fallbrook Hospital*, 360 NLRB No. 73, slip op. 2–3 (2014).[12] In addition, we note that the Respondent's deliberate refusal to bargain in good faith occurred in the critical postelection period when the Union, as a newly certified collective-bargaining representa-

[12] In *Fallbrook*, as here, the Board awarded negotiation costs to the union because the respondent refused to provide proposals or counterproposals for eight sessions, until the union had presented its full set of proposals; threatened to cease bargaining if the union persisted in encouraging employees to use its ADO form; and repeatedly refused to respond to the union's request for future bargaining dates.

tive, was highly susceptible to unfair labor practices tending to undermine the employees' support for the Union. See, e.g., *Ahearn v. Jackson Hospital Corp.*, 351 F.3d 226, 239 (6th Cir. 2003); *Arlook v. S. Lichtenberg & Co.*, 952 F.2d 367, 373 (11th Cir. 1992). In these circumstances, reimbursement of the Union's negotiation costs is necessary to make the Union whole and to ensure a return to the status quo at the bargaining table.[13]

Accordingly, we shall order the Respondent to reimburse the Union for the expenses it incurred for the collective-bargaining negotiations held from July 26, 2012, through January 11, 2013. Such expenses may include, for example, reasonable salaries, travel expenses, and per diems. See, e.g., *J.P. Stevens & Co.*, 239 NLRB 738, 773 (1978), remanded on other grounds 623 F.2d 322 (4th Cir. 1980), cert. denied 449 U.S. 1077 (1981).

ORDER

The National Labor Relations Board orders that the Respondent, Hospital of Barstow, Inc., d/b/a Barstow Community Hospital, Barstow, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union, California Nurses Association/National Nurses Organizing Committee (CNA/NNOC), AFL–CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Refusing to bargain collectively with the Union by failing and refusing to submit any proposals or counterproposals until the Union submits all of its proposals.

(c) Refusing to bargain collectively with the Union by prematurely declaring impasse and refusing to bargain unless the Union stopped using the assignment despite objection form.

(d) Changing terms and conditions of employment of unit employees without first notifying the Union and giving it an opportunity to bargain.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time, regular part-time, and per diem registered nurses, including those who serve as relief charge nurses, employed by the Respondent at its facility located at 555 South Seventh Avenue, Barstow, California; excluding all other employees, managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to the Respondent, already represented employees, guards and supervisors as defined in the Act.

(b) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and on request, bargain with the Union.

(c) At the Union's request, rescind the August 2, 2012 HeartCode policy, which replaced the onsite, instructor led training with the online training, and restore the reimbursement benefits for certification training that existed before the unlawful changes.

(d) Make all affected unit employees whole for any losses suffered as a result of the unlawful changes, in the manner set forth in the amended remedy section of this decision.

(e) Compensate the affected employees for any adverse tax consequences of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee.

(f) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form,

[13] We reject the Respondent's argument that an award of negotiation expenses is unwarranted here because its conduct was not as egregious as that of employers in *Frontier Hotel & Casino,* supra, and *Harowe Servo Controls*, 250 NLRB 958 (1980), where the Board awarded negotiation expenses. Although the Board in *Frontier Hotel & Casino* expressed its intention to "rely[] on bargaining orders to remedy the vast majority of bad-faith bargaining violations[,]" 318 NLRB at 859, it did not set the bar for an award of negotiating expenses at the level of the misconduct in that case. Nor did the Board in *Harowe Servo Controls* set some threshold level of egregiousness that must be satisfied in order to conclude that an employer's conduct infected the core of the bargaining process. Rather, our decisions, including those in *Frontier Hotel & Casino* and *Harowe Servo Controls*, make clear that, in determining whether to award negotiating expenses, we will consider each case on its own merits, evaluating the effect of the violation on the wronged party and the injury to the collective-bargaining process.

As in *Fallbrook*, which involved a very similar pattern of bargaining, Member Johnson would find that an award of negotiation expenses is not warranted, because the Respondent's misconduct during this period was not so "unusually aggravated" as to "have infected the core of [the] bargaining process" as did the misconduct of the respondent in *Frontier Hotel & Casino*, supra, and he would only extend the certification year bargaining requirement by 6 months, rather than the full year extension recommended by the judge and adopted by his colleagues.

necessary to analyze the amount of backpay due under the terms of this Order.

(g) Reimburse the Union for the expenses it incurred for the collective-bargaining negotiations held from July 26, 2012, through January 11, 2013.

(h) Within 14 days after service by the Region, post at its Barstow, California facility copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 26, 2012.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the certification of the Union issued by the Board on June 29, 2012, is extended for a period of 1 year commencing from the date on which the Respondent begins to bargain in good faith with the Union.

Dated, Washington, D.C. August 29, 2014

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with the Union, California Nurses Association/National Nurses Organizing Committee (CNA/NNOC), AFL–CIO, as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to submit any proposals or counterproposals until the Union submits all of its contract proposals.

WE WILL NOT refuse to bargain collectively with the Union by prematurely declaring impasse and refusing to bargain unless the Union stops using the assignment despite objection form.

WE WILL NOT change terms and conditions of your employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL bargain with the Union, as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time, regular part-time, and per diem registered nurses, including those who serve as relief charge nurses, employed by us at our facility located at 555 South Seventh Avenue, Barstow, California; excluding all other employees, managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to us, already represented

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees, guards and supervisors as defined in the Act.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and on request, bargain with the Union.

WE WILL, at the Union's request, rescind the August 2, 2012 HeartCode policy, which replaced the onsite, instructor led training with online training, and restore the reimbursement benefits for certification training that existed before our unlawful changes.

WE WILL make all affected unit employees whole, with interest, for any losses suffered by them as a result of our unlawful unilateral changes.

WE WILL compensate all unit employees adversely affected for any adverse tax consequences of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee.

WE WILL reimburse the Union for the expenses it incurred for the collective-bargaining negotiations held from July 26, 2012, through January 11, 2013.

HOSPITAL OF BARSTOW, INC. D/B/A
BARSTOW COMMUNITY HOSPITAL

The Board's decision can be found at www.nlrb.gov/case/31-CA-090049 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

Juan Carlos Gonzalez, for the General Counsel.
Don T. Carmody and *Carmen M. DiRienzo* for the Respondent.
Micah Berul, Nicole Daro and *M. Jane Lawhon* for the Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Barstow, California, on June 18–20, 2013, and at San Francisco, California, on June 27, 2013. On September 26, 2012, California Nurses Association/National Nurses Organizing Committee (CNA/NNOC), AFL–CIO (the Union) filed the charge in Case 31–CA–090049 alleging that Hospital of Barstow, Inc., d/b/a Barstow Community Hospital (Respondent) committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). On October 19, 2012, the charge was amended. On December 27, 2012, the Acting Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(a)(5) and (1) of the Act. Respondent filed a timely answer to the complaint, denying all wrongdoing. On January 10, 2013, the Union filed the charge in Case 31–CA–096140 against Respondent. On April 30, 2013, the Regional Director issued a consolidated complaint against Respondent. Respondent filed a timely answer to the complaint, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation, with an office and principal place of business in Barstow, California, has been engaged in the operation of a hospital providing medical care. In the 12 months prior to the issuance of the complaint, Respondent, in conducting its business operations, derived gross revenues in excess of $250,000. Further, Respondent received goods and services valued in excess of $5000 directly from points outside the State of California. Accordingly, Respondent admits and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent operates an acute care hospital in Barstow, California. The Union was certified to represent the following bargaining unit on June 29, 2012

> All full time, and part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by the Respondent at its 555 South Seventh Avenue, Barstow, California facility; excluding all other employees, managers, confidential employees, physicians, employees of outside registries, and other agencies supplying labor to the Respondent, already represented employees, guards and supervisors as defined in the Act, as amended.

Respondent has a policy entitled "Event and Government Reporting" which ensures policies are in place to improve patient care and safety. Pursuant to that policy, employees are instructed to fill out an event report form, also referred to as an incident report, if something noteworthy occurs on their shift. Employees are trained on the policy and the event reporting system.

If a nurse believes staffing is inadequate, pursuant to the

event and government reporting policy, he or she is to raise the concern with the charge nurse and then move up the chain of command if the matter is not resolved. With regard to patient safety, nurses fill out a form of acuity each night. Respondent's event report form cannot be discovered in a medical malpractice suit or by the public.

The Union has created an "assignment despite objection" (ADO) form upon which nurses can document assignments or situations they feel are not safe for the patient or may compromise the nurse's license. The Union provided the form to Respondent's nurses shortly after the election. Before filling out the ADO form, the nurse must first verbally notify her supervisor about the issue and give her a chance to address the issue. Once filled out, the nurse gives a copy of the form to her manager and a copy to the Union. There is a line on the form for the supervisor's response. The Union instructed the employees to also follow Respondent's policy. The ADO form is not protected from discovery.

Pursuant to an agreement prior to the Union's certification, the parties had agreed on some issues including retirement benefits, union security and recognition. These provisions were prenegotiated before the election as to what the parties would agree to if the nurses selected the Union as their representative. The parties never executed this preelection agreement. The agreement also provided for arbitration of all disputes.

The parties first met for bargaining on July 16, 2012. The meeting was introductory and took place at the hospital. The Union was represented by Stephen Mathews and three bargaining unit nurses. Respondent was represented by Don Carmody, attorney, and hospital administrator Jan Ellis. Mathews submitted an information request and the parties scheduled three dates for bargaining. During this meeting, Carmody stated that the Union needed to stop using the ADO forms. Mathews stated that the nurses would follow the Respondent's internal procedure as well as filling out the ADO forms.

On July 26, 2012, the parties met for bargaining. The Union presented its proposed contract with all its proposals except wages. Carmody stated he would not give any proposals or counter proposals until the Union provided all of its proposals. Mathews responded that Respondent was required to bargain and that its refusal to offer proposals or counterproposals was bad-faith bargaining. Carmody responded that he had always bargained in this manner and was not going to change. Respondent did not offer any proposals or counterproposals.

On August 1, the parties again met for bargaining. Pursuant to the precertification unsigned agreement, the parties tentatively agreed to articles of the Union's proposed contract regarding recognition, union security and retirement benefits. Carmody again stated that he would make no proposals or counterproposals until the Union submitted all its proposals including its wage proposal. Mathews responded that Carmody was not bargaining in good faith. Carmody ended the meeting stating that he would make no responses until he obtained all of the Union's proposals.

On August 15, the parties again met for bargaining. The parties discussed the union information requests. Mathews presented a document to show that ADO forms were used at the hospital in Watsonville, California. Carmody responded that it did not matter what occurred at other hospitals, Respondent would not accept the ADO forms. The meeting ended with Carmody refusing to make proposals or counterproposals until he received the Union's wage proposal.

During the last week of August, the Union learned that Respondent had changed its policy on how nurses could obtain training for their required certifications in basic life support, advanced cardiac life support, and pediatric advance life support which must be renewed every 2 years. In fact, Respondent had made these changes in April, prior to the Union's election as bargaining representative.

On September 13, the parties again met for bargaining. The Union submitted a proposal to allow nurses to obtain their certification at any American Heart Association approved facility. Carmody said he was unable to contact Respondent's officials for an answer. Mathews asked for proposals or counterproposals. Carmody again responded that he would make no proposals or counterproposals until he had the Union's full contract proposal.

On September 26, the Union submitted its wage proposal to Jan Ellis. Carmody was not able to be present for this meeting. Ellis accepted the Union's proposal but stated that she had no authority to bargain at that time. Mathews stated that the Union wanted proposals or counterproposals. Ellis stated that she was there only to receive the wage proposal.

The parties next met on October 17, Mathews again requested proposals and counterproposals. Carmody discussed the Union's proposals for approximately 2 hours. Carmody said he would provide written counterproposals on a number of articles "at some point." Later that day, Carmody emailed to Mathews a grievance and arbitration proposal and a no strike/no lockout proposal.

Mathews opened the November 8 session by requesting Respondent to make proposals and counterproposals. Respondent caucused and then returned with four written proposals on posting and filling vacancies, sick leave, vacations, and weekend rotation.

After a second caucus, Carmody offered four counterproposals on discharge and discipline, in-service and education, probation, and personnel records and evaluation. After a third caucus, Carmody presented three proposals on hours of work and overtime, holidays, and employee classifications. After a fourth caucus, Carmody offered two proposals covering nondiscrimination and contract duration, and later provided proposals on management rights and the preamble, Carmody ended the meeting by stating he would offer six more written proposals at the next session.

At a bargaining session on November 14, the parties bargained about severability and employee classifications. They also bargained about hours of work and overtime, weekend rotations, and posting and filling vacancies.

On November 29, the parties negotiated over leaves of absence and evaluations and warnings. The parties also negotiated over nondiscrimination, preamble, severability, and general provisions. Carmody proposed the next session be scheduled for January and the Union objected. The parties finally agreed to meet on December 28.

At the December 28 meeting, the Union requested infor-

mation about the pension plan and the parties discussed that subject. Carmody stated that the parties were at impasse over the use of the ADO forms. Mathews insisted that the parties were not at impasse. Carmody stated that the parties were at impasse on the ADO form and therefore were at impasse over every issue.

Carmody stated that the parties needed a mediator. Mathews denied the parties were at impasse but said he would not oppose mediation.

On December 28 and 31, Mathews sent Carmody emails stating that the parties were not at impasse and that the Union was willing to bargain over the issue of the ADO forms. Mathews stated that while there was no impasse, the Union would agree to the assistance of a federal mediator.

On January 11, 2013, the parties met with a federal mediator. The mediator shuttled back and forth between the parties who were in separate rooms. The mediator told the union side that Carmody took the position that the parties were at impasse over the use of the ADO forms and, therefore, were at impasse over everything. Mathews insisted the parties were not an impasse.

On January 14, 16, and 21, 2013, Mathews sent emails to Carmody requesting bargaining. However, Carmody did not respond. The parties did not meet again after the session with the federal mediator.

Respondent's Defense

Respondent claims the existence of "an ad hoc" agreement between the Union and Respondent's parent corporation that requires all disputes be submitted to mandatory arbitration. Thus, Respondent argues that this case should be deferred to arbitration. Further, Respondent contends that the parties were at impasse when it refused to bargain. Respondent contends that it could lawfully request a full contract proposal before offering proposals of its own. Respondent further contends that the merger of the Union with the National Union of Healthcare Workers created discontinuity of representation privileging a refusal to bargain.

III. ANALYSIS AND CONCLUSIONS

A. The Respondent Was Obligated to Bargain

Section 8(a)(5) and 8(d) of the Act obligates parties to "confer in good faith with respect to wages, hours and other terms and conditions of employment." *NLRB v. Wooster Division of Borg-Warner Corp.,* 356 U.S. 342, 344 (1958). The good-faith requirement means that a party may not "negotiate" with a closed mind or decline to negotiate on a mandatory subject with a closed mind or decline to negotiate on a mandatory bargaining subject. "While Congress did not compel agreement between employers and bargaining representatives, it did require collective bargaining in the hope that agreements would result." *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 152 (1956). Sincere effort to reach common ground is of the essence of good-faith bargaining. *NLRB v. Montgomery Ward & Co.,* 133 F.2d 676, 686 (9th Cir. 1943); *NLRB v. Reed & Prince Mfg. Co.,* 118 F. 2d 874, 885 (1st Cir. 1941), cert. denied 313 U.S. 595 (1941).

The quantity or length of bargaining does not establish or equate with good-faith bargaining. *NLRB v. American National Insurance Co.,* 343 U.S. 395, 404 (1952). The Board will consider the "totality of the conduct" in assessing whether bargaining was done in good faith. *NLRB v. Suffield Academy,* 322 F.2d 196 (2d Cir. 2003).

During the bargaining from July to October, Carmody refused to offer proposals or counterproposals until the Union supplemented its bargaining proposals with its economic proposals. In *MRA Associates, Inc.,* 245 NLRB 676, 677 (1979), the Board found that the failure to submit any proposals over the course of three bargaining sessions was evidence of "basic intransigence" on the employer's part designed to undermine the union's efforts to negotiate a contract. In *NLRB v. Arkansas Rice Growers Co-Op Assn.,* 400 F.2d 565, 568 (8th Cir. 1968), the court found that the single refusal to offer a counterproposal to the union's proposal regarding dues collection was not a per se violation. The court enforced the Board's order stating in relevant part, "Although as the Company suggests, it may not be bound to make counter proposals, nevertheless, evidence of its failure to do so may be weighed with all other circumstances in considering good faith."

Respondent refused to bargain unless the Union agreed to stop using the ADO forms. Respondent declared impasse over the Union's use of the ADO forms. The Union made no proposals for use of the ADO forms and denied an impasse existed. The Union expressed a willingness to bargain over the form or patient safety issues. The Union never instructed nurses to bypass the Respondent's procedures. Rather the Union instructed the nurses to follow Respondent's policies in addition to using the ADO forms. In none of the bargaining sessions, did either party make a proposal regarding the use of ADO forms, nor did they bargain over them.

The Board considers negotiations to be in progress, and thus will find no genuine impasse to exist, until the parties are warranted in assuming that further bargaining would be futile or that there is "no realistic possibility that continuation of discussion . . . . would be fruitful." *Saint-Gobain Abrasives, Inc.,* 343 NLRB 542, 556 (2004).

The existence of impasse is a factual determination that depends on a variety of factors, including the contemporaneous understanding of the parties as to the state of negotiations, the good faith of the parties, the importance of the disputed issues, the parties' bargaining history, and the length of their negotiations. *Taft Broadcasting Co.,* 163 NLRB 475, 478 (1967).

Section 8(a)(5) prohibits a party's insistence upon a permissible subject as a condition precedent to entering an agreement and precludes a good-faith impasse. *Borg-Warner Corp.,* 356 U.S. 342 at 347–349 (1958). Here, the Union continually offered to bargain about the proposals of the parties, as well as the ADO form. Respondent unlawfully refused to bargain unless the Union ceased using the ADO forms. While Respondent could lawfully refuse to accept the ADO forms, it could not condition bargaining on the Union's abandonment of the ADO forms.

In this case, the Union argued that the parties were not at impasse. It is not sufficient for a finding of impasse to simply show that the employer had lost patience with the Union. Impasse requires a deadlock. As the Board stated in *Powell Electrical Mfg.* Co., 287 NLRB 969, 973 (1987):

> That there was no impasse when the Company declared is not to suggest that if the parties continued their sluggish bargaining indefinitely there would have been agreement on a new contract. Such a finding is not needed, nor could it be made without extra-record speculation, to find on this record that when the Company declared an impasse there was not one, even as far apart as the parties were. They had most of their work ahead of them, and judging by the opening sessions clearly had different goals in mind for a contract. Whether their differences ever would have been resolved cannot be known; but that is the nature of the process. It is for the parties through earnest, strenuous, tedious, frustrating and hard bargaining to solve their mutual problem—getting a contract—together, not to quit the table and take a separate path.

Accordingly, I find that the parties were not at impasse when Respondent declared an impasse and refused to bargain unless the Union ceased using ADO forms.

B. Affiliation with National Union of Healthcare Workers

The National Union of Healthcare Workers affiliated with the Union effective January 1, 2013. Under the affiliation the two unions provide support to each other but each remains autonomous. The record shows that Union lent NUHW over $1 million per month from January through April 2013. There is no evidence of any changes in the operations of the Union since the merger.

As the party asserting lack of continuity of representation, the Respondent has the burden of proof. *Sullivan Bros. Printers,* 317 NLRB 561, 562 (1995). In the context of an affiliation, the Respondent must "demonstrate that the affiliation resulted in changes that were sufficiently dramatic to alter the identity of the association, and thus, the substitution of an entirely different union as the employees' representative." *CPS Chemical Co.,* 324 NLRB 1018, 1020 (1997).

The only factor the Respondent can rely on is the change in the Union's finances. I find that Respondent has not met its burden of proof on this issue. The affiliation has not changed the Union's leadership, the manner in which it represents employees, or its day-to-day operations. The Union operates as an autonomous entity before and after the affiliation.

C. There is no Agreement to Arbitrate this Dispute.

Respondent contends that the Board should defer to arbitration. The Board has found deferral appropriate in instances where (1) the dispute arose within the confines of a long and productive bargaining relationship; (2) there is no claim of employer animosity to the employees' exercise of protected statutory rights; (3) the collective-bargaining agreement's arbitration provision envisions a broad range of disputes; (4) the arbitration clause clearly encompasses the dispute at issue; (5) the employer indicates a willingness to utilize arbitration to resolve the dispute; and (6) the dispute is eminently well suited to such resolution. *Collyer Insulated Wire Co.,* 192 NLRB 837 (1971); *United Technologies Corp.,* 268 NLRB 557, 558 (1984).

Here the agreement to arbitrate was never signed by the parties. There has been no collective-bargaining relationship between the parties. As there is no agreement between the parties, I cannot find an arbitration clause or an agreement to arbitrate. Accordingly, I find deferral to arbitration to be inappropriate.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to offer proposals or counterproposals until the Union offered a full contract proposal.
4. Respondent violated Section 8(a)(5) and (1) by declaring impasse and refusing to bargain unless the Union ceased using ADO forms.
5. Deferral to arbitration would be inappropriate in this case.
6. Respondent's conduct above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act. Accordingly, I shall order Respondent to resume collective bargaining with the Union. I shall order that the certification year be construed as beginning the date the Respondent begins to bargain in good faith with the Union pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[1]

ORDER

The Respondent, Hospital of Barstow, Inc, d/b/a Barstow Community Hospital, Barstow, California, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively by insisting on a full contract proposal before offering proposals and counterproposals.

(b) Refusing to bargain collectively by declaring impasse over a permissible subject of bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment, and other terms and condi-

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

tions, and if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

> All full time, and part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by the Respondent at its 555 South Seventh Avenue, Barstow, California facility; excluding all other employees, managers, confidential employees, physicians, employees of outside registries, and other agencies supplying labor to the Respondent, already represented employees, guards and supervisors as defined in the Act, as amended.

(b) The certification year be construed as beginning the date the Respondent begins to bargain in good faith with the Union pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962).

(c) Within 14 days after service by the Region, post at its facility in Barstow, California, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 26, 2012.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 31, a sworn certification of a responsible official on a form provided by Region 31 attesting to the steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. September 9, 2013

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively by requiring a full contract proposal from the Union before making proposals or counterproposals.

WE WILL NOT refuse to bargain with the Union by insisting to impasse that the Union cease using ADO forms.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment, and other terms and conditions, and if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

> All full time, and part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by the Respondent at its 555 South Seventh Avenue, Barstow, California facility; excluding all other employees, managers, confidential employees, physicians, employees of outside registries, and other agencies supplying labor to the Respondent, already represented employees, guards and supervisors as defined in the Act, as amended.

HOSPITAL OF BARSTOW, INC. D/B/A BARSTOW COMMUNITY HOSPITAL